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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,237	01/23/2004	Bruce A. Rogers	ROG030.10005	8491
41716	7590	10/29/2007		
JOHN F. LETCHFORD ARCHER & GREINER, P.C. ONE CENENNIAL SQUARE HADDONFIELD, NJ 08033			EXAMINER DOAN, ROBYN KIEU	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 10/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/764,237

Applicant(s)

ROGERS ET AL.

Examiner

Robyn Doan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1,3-7 and 11-15 is/are pending in the application.
- 4a) Of the above claim(s) 8-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7 and 11-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's Amendment filed 8/2/2207 has been entered and carefully considered. Claims 1 and 3 have been amended. Claim 2 has been canceled. Limitations of amended claims have not been found to be patentable over prior art of record, therefore, claims 1, 3-7 and 11-15 are rejected under the same ground rejections as set forth in the office action mailed 4/24/2007.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3-6, 11 and 13 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3-6 and 9 of

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compending Application No. 10/763,846. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the slip friction mechanism of the instant application vs. the non-slip friction mechanism of the compending application. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify the claims of the instant application with the non-slip friction mechanism of the compending application, since these terms are very broad it depends on each individual using it and also since an ordinary user force has not been defined, these terms are held to be merely intended use.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilde (United States Patent No. 870,330).

Wilde discloses a device comprising a first body member **a** and a second body member **b**. The first and second body members include gripping portions 7,11 adapted to be squeezed by a user. Hinge means 19 pivotally connect the body members. The device further includes adjustment means coaxially arranged with respect to the hinge means for causing the gripping portions to remain at a point at which the gripping portions are squeezed together by a user. The adjustment means comprises a slip friction mechanism. The slip friction mechanism includes an irregular first surface 10 associated with the first body member, an irregular second surface 15 associated with the second body member, and a compression spring 18 for maintaining contact between the first and second surfaces. The irregular surfaces include toothed surfaces.

Claims 1, 3-7 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheehan (United States Patent No. 3,546,750).

Sheehan discloses a device comprising a first body member 22 and a second body member 24. The first and second body members include gripping portions adapted to be squeezed by a user. Hinge means 38 pivotally connect the body members. The device further includes adjustment means coaxially arranged with respect to the hinge means for causing the gripping portions to remain at a point at which the gripping portions are squeezed together by a user. The adjustment means comprises a slip friction mechanism. The slip friction mechanism includes an irregular first surface 32 associated with the first body member, an irregular second surface 35 associated with the second body member, and a biasing mechanism 38 for maintaining

contact between the first and second surfaces. The irregular surfaces include toothed surfaces. One of the surfaces is provided on an insert (see figures 4 and 7).

Claims 1, 3 and 12-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Rizzuto (WO 02/058504).

Rizzuto discloses a device comprising a first body member and a second body member. The first and second body members include gripping portions 18 adapted to be squeezed by a user. Hinge means 10 pivotally connect the body members. The device further includes adjustment means coaxially arranged with respect to the hinge means for causing the gripping portions to remain at a point at which the gripping portions are squeezed together by a user. The adjustment means comprises a slip friction mechanism. The slip friction mechanism includes a first surface 23 associated with the first body member, a second surface 25 associated with the second body member, and a spring 26 for maintaining contact between the first and second surfaces. The spring is a torsion spring connected to each of the first and second body members. The device further includes handle portions 30,32 on each of the first and second body members.

Response to Arguments

In response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed

knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

In response to applicant's argument that Wilde is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Wilde has shown all the claimed structures, the intended use is not given patentable weight in an article claim.

Applicant has also argued that Sheehan is a one way gripping device therefore it prevents reverse rotation of the arms and as such it is the antithesis of the slip friction mechanism, whereas the present invention does permit reverse rotation. It is noted that all the claimed structures have been shown, the intended use is not given patentable weight in an article claim.

In response to applicant's argument that Rizzuto's hair gripping portions 18 are not adapted to be squeezed by a user, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner
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rkd

October 22, 2007